IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO. 606/06

[Pramod Ajabrao BhIse & others vs. Deepak Atmaram Dharmale (Khatik) & 2 ors.]

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : S.R.DONGAONKAR, J
DATED : 30th October, 2007.

1. Heard Shri S.C.Bhalerao, Advocate, for the appellants/original plaintiffs.

2. The appellants/plaintiffs had filed a suit bearing R.C.S.No. 1/99, which was decided by Civil Judge, Junior Division, Kalamb, on 22.08.2003. The said suit was for declaration of ownership, recovery of possession and for grant of temporary injunction.

3. The learned trial Judge dismissed the said suit.

4. The appellants then filed R.C.A.No. 82/2003 to challenge that judgment and decree passed by the trial Court. The same was dismissed by the learned Second Ad-hoc Additional District Judge, Yavatmal, by his

judgment and order dated 7th October, 2005.

5. The issues and findings recorded by the learned trial Judge are thus-

	ISSUES	FINDINGS
1)	Does plaintiff proves that he is owner of the suit shop?	Negative
2)	Does he prove that he had let out suit shop to the defendant no.3 on monthly tenancy of Rs. 150/-?	Negative
3)	Does he proves that defendant no. 1 illegally took possession of the suit shop from defendant no. 3 ?	Negative
4)	Do defendants 1 & 2 prove that suit shop is belonging to 'Anusaya Mata Devsthan' and was leased out to Shankar Dharmale, on 28.07.1988, by the defendant no. 3?	Affirmative.
5)	Whether the suit is bad for mis-joinder of parties?	Negative
6)	Whether the plaintiff is entitled to the reliefs of declaration of ownership and	

declaration that defendant no.1 & 2 are the tres-passers? Negative

7) Whether the plaintiff is entitled to the decree of possession? Negative

8) Whether the plaintiff is entitled for decree of damages of Rs.5,000/-? Negative

9) Whether the defendants are entitled to the compensatory costs. If yes, at what rate? Negative

10) What reliefs and Costs? As per final order.

6. It has been clearly held by the learned trial Judge that defendants 1 & 2 have proved that the suit shop is belonging to 'Anusaya Mata Devsthan' and was leased out to Shankar Dharmale by Defendant no.3.

7. It clearly appears that the said Trust is the necessary party to the suit, considering the nature of the reliefs sought by the plaintiffs/appellants.

8. As they have not made the Trust as a party and there are concurrent findings of the learned trial Judge and of the appellant Judge, I do not find any merit in this appeal. It must be mentioned that some admissions by Defendant No. 3 cannot create any right

in favour of the plaintiffs in such circumstances. Hence, the appeal is dismissed.

JUDGE

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Rvjalit